

February 4, 2020

Advisory Committee to the Director  
National Institutes of Health  
c/o Gretchen Wood  
One Center Drive, Room 126  
Bethesda, MD 20892-0147

Submitted electronically via email: [woodgs@od.nih.gov](mailto:woodgs@od.nih.gov)

Dear Committee Members,

The Federation of American Societies for Experimental Biology (FASEB) appreciates the efforts of the Advisory Committee to the Director's (ACD's) Working Group on Changing the Culture to End Sexual Harassment to develop its Final Report, including recommendations directed to NIH, extramural institutions, and scientific societies. FASEB was impressed by the Working Group's efforts to further develop the four draft recommendations presented to the ACD in June, and applauds the special care given to this issue. In addition to maintaining the Working Group during implementation, we hope that NIH will work with the Equal Employment Opportunity Commission (EEOC) and explore the existing research, frameworks, and solutions already compiled and created by this group. As NIH proceeds with implementation of the recommendations, we encourage consideration of the following feedback, organized by theme.

Theme 1: Increase Transparency and Accountability in Reporting of Professional Misconduct, especially Sexual Harassment

FASEB commends the strong stance taken to move beyond the narrow legal categories of sexual harassment in line with the National Academies of Sciences, Engineering, and Medicine's expanded definition. This tone underscores recommendation 1.1, which treats professional misconduct with the same gravity as research misconduct. Figure 1 emphasizes different types of professional misconduct, differentiating general harassment and bullying, sexual harassment, and research misconduct. This figure is helpful for reinforcing the distinct types of professional misconduct. Further distinction of the different types of misconduct must include practical implications for investigating claims of research misconduct versus harassment. Therefore, **we suggest NIH communicate a clear model for professional misconduct investigations of harassment to extramural institutions.** Similarly, recommendation 1.1d indicates that NIH-funded institutions should be required to develop or maintain a professional code of conduct, which FASEB agrees with in principle. However, NIH likely does not have the jurisdiction to mandate the contents of any code of conduct. Thus, when communicating this recommendation extramurally we strongly suggest inclusion of minimally acceptable language, as well as clear criteria for an effective code of conduct and process for ensuring NIH-grantee institutes adhere to those standards.

Recommendation 1.1 continues with encouraging NIH-funded institutions to establish an office for professional misconduct. Currently, it is unclear how this office would differ from the already existing Office of Equity, or similar, and Title IX Coordinator. As noted in the Final Report, there is a great deal of distrust regarding the interpretation of Title IX and views that the existing Office of Equity often serves to protect the institution rather than the targeted individuals. If the envisioned office for professional misconduct differs from the typical Office of Equity additional clarification and guidelines for implementation are necessary to achieve a victim-centered organization.

Establishing online and telephone-based reporting mechanisms that accept both anonymous and non-anonymous reports as proposed in recommendation 1.2, is an excellent step forward in being able to identify harassers both at NIH and at extramural institutions. However, it is unclear what will happen with anonymous reports. Usually a named complainant is required for official adjudication processes to occur; therefore, **resources associated with such a hotline and web-based forms need to clearly communicate to potential anonymous reporters what outcome they can expect.** If no action, formal or informal, will be taken on anonymous reports, this needs to be explicitly stated at the beginning of the process. FASEB encourages NIH and extramural institutions to diligently track anonymous reports and whenever possible take informal action by discussing ways to improve professional conduct with the accused party. Furthermore, as noted in our prior [comments](#), it is unclear how NIH will handle reports of harassment by extramural individuals. Transparency of process is vital to build trust within the community and increase likelihood of reporting. **Guidelines should be developed for coordination between NIH and extramural institutions to follow for a streamlined investigative process.**

Requiring all key personnel on an NIH grant to attest that they have not been found to have violated their institution's professional conduct policy, as detailed in recommendation 1.6, is commendable. Given the variable legal landscape at research environments across the country it is likely that implementation of this may be laborious. Yet still FASEB believes this will be worth the initial strife and implementation should be prioritized. Recently, we supported a similar [term of award condition](#) implemented by the National Science Foundation. National Aeronautics and Space Administration is also [undergoing](#) a similar change in their terms of award. Given other agencies prior accomplishments, we expect NIH will be able to achieve the same level of success in this endeavor. The period of time the declaration applies to will likely require further discussion. While FASEB understands the urgency of recent misconduct, the length of tenure makes all findings at the current and all prior institutions of interest. Admission of a finding should not automatically preclude funding, but would initiate a conversation with NIH about prior corrective action and manifestation evidenced by current behavior.

## Theme 2: Establish Mechanisms for Restorative Justice

Shifting the narrative away from the institutions and towards the targets' needs is imperative and FASEB thanks the Working Group for explicitly taking this position. Including recommendation 2.1 to have institutions provide victims with resources for support such as legal counsel, psychological services, and sponsorship for conferences further bolsters a victim-focused approach. Implementation of funding-based recommendations must continue to concentrate on needs of the affected individuals.

Several recommendations in this theme focus on restoration of affected individuals, but it appears these only apply to individuals with official findings of a policy violation. Clarity on required documentation to be eligible for proposed restorative practices, including funding for research or travel, are needed. If the only acceptable documentation is an official finding of policy violation from the extramural institution **FASEB encourages consideration of policies to help affected individuals who may not have an official finding.** This is because such findings rely on working with the Title IX Coordinator, with whom the Final Report acknowledges there is often deep distrust. There is no explicit statement in the Final Report regarding the inherent conflict of Title IX both requiring reporting and serving to protect victims, although it is implied through the various discussions of institutional distrust and betrayal. Outright

acknowledgement of this conflict and guidelines for best practices for Title IX Coordinators for protecting victims may help build trust in NIH as a resource for ending sexual harassment.

EEOC noted in the 2016 Select Task Force on the Study of Harassment in the Workplace [Report](#) that studies have found between 6 percent and 13 percent of individuals who experience harassment file a formal complaint. Similarly, the 2019 NIH Workplace Climate and Harassment [Survey](#) noted that of the respondents who experienced sexual harassment in the past 12 months and spoke to someone about the experience, only 7.3 percent spoke to the NIH Civil Program or the NIH Office of Equity, Diversity, and Inclusion, and only 3.5 percent talked to someone at the NIH Office of the Ombudsman. Recognizing that a vast majority of sexual harassment is never formally reported, FASEB urges the Working Group to consider mechanisms to help victims without official findings.

#### Themes 3 and 4: Ensure Safe, Diverse, and Inclusive Research and Training Environments

Attempts to shift the power imbalance to create a more equitable environment are vital to the health and safety of the biological and biomedical workforce. New mechanisms to grant research awards directly to trainees, as described in recommendation 3.1, achieve a substantial shift in the hierarchical power structure and FASEB looks forward to swift implementation of new awards and/or modifying terms of existing awards. Furthering the expectation of safe work environments, we commend the mandate for evidence of safe environments, and particularly value the recommendation that NIH require evidence of mentor training and professional conduct for key personnel. Intentional attention to international scholars as a particularly vulnerable population is likewise appreciated. Inclusion of risk mitigation plans with identifiable actions for vulnerable populations may help create meaningful change, but we urge the Working Group to further consider this especially vulnerable population during implementation.

Required anti-sexual harassment training described in recommendation 3.3 is significant. We acknowledge the legal challenges and institutional burden that this may pose, but echo the Working Groups' stance that like Responsible Conduct of Research, this can and should become the norm over time. However, we reiterate our previous recommendation that mandatory training should be extended beyond just key personnel as harassment can occur among any staff or research team members, not just those supported by a grant. While we acknowledge the consideration that in corporate environments it appears most effective to provide trainings to managers, this finding may not extend to the informal environment found in many scientific laboratories and departments.

**All members of research groups supported by NIH funds should be required to take professional conduct training, including anti-sexual harassment training.** This would also help to establish meaningful culture change at all levels in the research environment. Furthermore, the inclusion and emphasis of vital elements for the training is appreciated, but FASEB encourages NIH to take more drastic measures with regular audits of the required training and define clear enforceable criteria the training must minimally meet. Evidence-based and recurring training must be emphasized to create meaningful change. Ideally, there will also be a mandate for ongoing in-person training for those in positions of power and leadership.

Recognition and amplification of the fact that research environments are largely male-dominated and hierarchical is critical, as this creates significant risk factors for sexual harassment and professional misconduct. To create change, all stakeholders must first be able to identify clearly problematic factors. FASEB appreciates the ACD Working Group for leading by example in this regard. Criteria for certification of an institution with outstanding cultures that enhance equity and diversity and/or adoption of the Athena SWAN model, as indicated in recommendation 4.2, appropriately provides incentive for all institutions to recognize the significant challenges of the current research training environment and work towards meaningful improvements. Recommendations included in 4.1 also aim to chip away at this pervasive problem. Changes to peer review such as anonymous study section reviews and ensuring diverse representation on councils and peer review panels are excellent advances to push the needle

towards equity. Furthermore, is it imperative to address the issue of “ghost PIs” as suggested. However, little guidance is given for tackling this challenge. As the Working Group continues to evaluate best practices to change the climate, we urge guidance for this issue.

Likewise, it is unclear how the rewards and incentives for the “superstar” culture of science will be decreased. Departmental and institutional leadership must work together to hold all personnel to the same level of professional standards. One suggestion for accomplishing this may be to **implement anonymous yearly performance reviews of PIs by their trainees**, reviewed by departmental leadership. This gives the departmental leadership an opportunity to intervene if problematic behavior and patterns arise before the behavior escalates to necessitating a formal investigation. These reviews could then be incorporated as evidence of professional conduct for key personnel on grant applications, as suggested in recommendation 3.2.

Great care to the inherent power imbalance in research environments must be taken when working to open lines of communication. For example, recommendation 4.4 includes the suggestion that the most junior personnel on a grant have the ability to disclose information about adverse work environments directly to NIH. Although in theory this is a promising and helpful practice, from a victim’s perspective it appears NIH is asking victims to come forward and potentially risk funding whilst doing so. If the PI on a grant is actively engaging in professional misconduct, then NIH has now put onus on this junior individual to not only report it, but do so knowing that this action may put the research funding and therefore the entire project in jeopardy. Giving more agency to less powerful individuals is admirable, but it must be implemented in a way that will be perceived by victims as not harmful to their careers.

Throughout the report it is heavily implied that NIH views itself as distinct from other research institutions in the way sexual harassment is handled. However, little evidence has been provided to assure victims that NIH is different from their home institutions. Contrarily, many recommendations in this report rely on victims going through their home institutions’ formal process, which may act to reinforce the notion that NIH is akin to the victims’ home institution. Furthermore, data shared may work to perpetuate feelings of distrust for NIH as a convener of oversight for sexual harassment. For example, as [presented](#) by the ACD Working Group, in 2019 there were 68 allegations of a sexual nature intramurally and corrective action was taken on 26. From the perspective of a victim, having less than a 40% chance of corrective action for the harasser does not inspire confidence that meaningful action will result from the painful process of reporting. These data, while transparent and reported with good intentions, may serve to perpetuate a culture of doubt that NIH is different from other academic institutions. Deep introspection and discussion are required about NIH’s role in creating institutional trust and combatting feelings of institutional betrayal if the agency is hoping to serve a different role for victims than the fraught role extramural institutions already play.

### Recommendations to Enhance Research and Provide Funding

Supporting research on procedures and policies that promote positive climates, such as recommendation 1.8, is admirable. Furthering the body of work of evidence-based approaches will be necessary to create safe and inclusive environments. However, as recommendation 3.4 indicates, a “one-size-fits-all” approach will likely not broadly apply due to differences in organizations and climates. **These funding opportunities should have a clear delineation between expectations for findings that will generally apply to similar institutions versus findings that are very institution specific.** Additionally, when awarding funding for this work it is imperative that awards go to a variety of types of institutions and climates so attempts can be made to apply findings broadly across all types of NIH-funded institutions and climates.

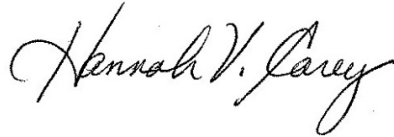
Collecting data from a wide-scale climate survey may help provide valuable insight into the pervasiveness of problematic climates, as well as potentially identify procedures and processes that are working to address the issue. The NIH Workplace Climate and Harassment Survey results were informative and

widespread use of the instrument could prove extremely powerful. **When the instrument is deployed for extramural use it will be critical to communicate the sections of the survey that are general and can be used verbatim at any institution in order to allow for vast comparisons, versus the sections of the survey that were very specific for NIH culture and should be modified.** Additionally, extra emphasis should be included to indicate that a question regarding visa status is not currently in the survey, but should be added to gain valuable data regarding that vulnerable population.

All themes include recommendations that require additional funding, whether the funding be for additional research or more victim-centered actions. While commendable and availability of additional funds to support victims is necessary, it is unclear where these funds will come from. Well-defined implementation plans for each recommendation are critical to ensuring funding occurs in a timely manner.

FASEB thanks the ACD Working Group on Changing the Culture to End Sexual Harassment for its diligent efforts leading to this Final Report. We recognize that there is no easy solution for any of the charges this group was tasked with. Safe environments are essential for production of quality science, and we are grateful to NIH for amplifying this message. Throughout these comments we have highlighted areas that would greatly benefit from clear implementation plans and require further thoughtful discussion. FASEB looks forward to receiving an implementation plan and hopes to see these comments incorporated, as well as further stakeholder engagement from the Working Group.

Sincerely,

A handwritten signature in black ink that reads "Hannah V. Carey". The signature is written in a cursive, flowing style.

Hannah V. Carey, PhD  
FASEB President

Cc: Francis S. Collins, MD, PhD  
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